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Ministry of  
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# **Early evaluation of the Domestic Violence, Crime and Victims Act 2004**

Marianne Hester, Nicole Westmarland, Julia Pearce  
and Emma Williamson

Ministry of Justice Research Series 14/08  
August 2008

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## Summary

This study was commissioned to provide an early evaluation of some of the measures of the Domestic Violence, Crime and Victims (DVCV) Act 2004. It aimed to:

- establish baseline data against which to evaluate the implementation of the new measures;
- provide an early snapshot (to December 2007) of progress towards implementation;
- identify emerging issues and offer recommendations for policy and (good) practice in relation to implementing the measures, and in relation to improvements that can be made to current data collection.

The report focuses on the three measures of the Act that were implemented during the evaluation period, i.e. making common assault an arrestable offence;<sup>1</sup> making it an arrestable, criminal offence to breach a non-molestation order; and extending the civil law on domestic violence (to ensure cohabiting same-sex couples have the same access to non-molestation and occupation orders as opposite sex couples, and non-molestation orders are available to couples who have never cohabited).

The research method involved:

- quantitative analysis of the nature and frequency of domestic violence incidents reported to police in two study locations – Croydon and South Tyneside – during one period pre- and two periods post-implementation of common assault as an arrestable offence;
- quantitative analysis of national data on non-molestation and occupation orders in the period leading up to and after implementation of criminalisation of breach of a non-molestation order and extension of availability of non-molestation and occupation orders;
- qualitative interviews with professionals and victims/survivors, before and after implementation.

## Findings

### Making common assault an arrestable offence

- Professionals viewed being able to arrest for common assault as a positive move that provided clarification of existing good practice.
- Arrests as a proportion of incidents did not show an increase in South Tyneside. In Croydon the proportion of incidents resulting in arrest showed an increase between 2005 and 2006 and decrease from 2006 to 2007. These features need to be examined over a longer period before any significant patterns may be ascertained.

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<sup>1</sup> Although this measure was superseded by the Serious Organised Crime and Police Act 2005, which amended the list of arrestable offences making all offences arrestable, this is still included within the scope of this evaluation.

- The proportion of incidents recorded as common assault went up over the three years in both South Tyneside and Croydon. While the numbers are small, especially in South Tyneside, they support a tentative finding of an increasing use of common assault since this became an arrestable offence.
- In South Tyneside the increase in use of common assault did not affect Breach of the Peace being used as the main arrestable offence. By contrast, in Croydon the increased use of common assault paralleled a decrease in the use of other arrestable offences (in particular ABH and criminal damage), indicating that the police may previously have been using other offences in order to procure an arrest. Making common assault an arrestable offence may thus have helped to overcome this anomaly.

### **Criminalising the breach of a non-molestation order**

The period for evaluation of the criminalisation of breach of a non-molestation order was only brief, from July to November 2007, and this needs to be borne in mind in relation to the findings. These were:

- Professionals expressed concerns about the phased entry of the new measure with different time limits for different jurisdictions, which was causing confusion among legal professionals and the police.
- Views differed among professionals as to the impact of the criminalisation of breach of a non-molestation order on applications and orders:
  - Some expected little impact as it had always been possible to attach a power of arrest to an injunction anyway.
  - Those engaged with the court process felt that there had been a reduction in applications for non-molestation orders and orders granted since July 2007 either due to both a reduction in the availability of legal aid and the criminalisation of breaches, or because victims were concerned about potential imprisonment that follows a breach.
  - Most advocates indicated that victims/survivors welcomed the new measure.
- Victims/survivors were generally supportive of heavier sanctions for breaches, and were especially concerned with enforcement.
- Following criminalisation of breach of a non-molestation order the number of applications and orders decreased when compared with the previous year. However, with such a short trend it is not possible to conclude whether this is linked to the DVCV Act or whether it represents a consolidation of previous trends.

### **Extending availability and use of protection orders**

The period of evaluation of the extension of non-molestation and occupation orders was too brief for any real findings to emerge, and this is an area that will need to be monitored in the longer term. Initial findings indicated that:

- Both professionals and victim/survivors supported that non-molestation and occupation orders be made available to same sex relationships and to couples who have never lived together.

- Professionals reported that although more victims of same sex domestic violence were accessing support services the numbers were tiny and therefore unlikely to have had any impact on numbers of non-molestation or occupation orders.
- None of the professionals working in the courts had seen any change in the parties considered for non-molestation orders. The data available did not allow examination of whether orders had been granted to couples who have never cohabited.
- Professionals who commented on the, as yet not implemented, use of restraining orders for any offence and on acquittal, saw this as the measure that could potentially have the biggest impact.

## Recommendations

This evaluation, which provides an early ‘snapshot’ of progress towards the implementation of the new measures of the Act, shows that the impact by December 2007 had been limited and in some respects unclear. However the tentative findings provided lead to the following recommendations:

- That specific guidance is developed and training implemented for the police regarding the new measures, particularly in relation to the criminalisation of breach of a non-molestation order (Part 1 section 1.1 DVCV Act 2004).
- That the measures intended to increase the protection of victims by enabling the courts to impose restraining orders when sentencing for any offence, and enabling courts to impose restraining orders on acquittal for any offence (or if a conviction has been overturned on appeal) (Part 2 sections 12 and 13) are implemented as soon as possible.
- That the impact of the DVCV Act is monitored in the longer term. This requires that reliable data on both civil and criminal processes are collected and collated nationally:
  - The Ministry of Justice needs to collect and collate data from all the relevant courts in relation to breaches and to applications and orders for non-molestation and occupation orders, and work to ensure accuracy.
  - The current complexities in assessing the progress of cases through the criminal justice system will only be overcome if police and CPS data are linked directly, and at a national level.

It also requires that the data is contextualised via the impact of other factors on the use of civil remedies, such as availability of legal aid, and concerns by victim/survivors regarding criminalisation and/or enforcement.

# 1. Context and method

## 1.1 Introduction

The Department for Constitutional Affairs (DCA – now part of the Ministry of Justice) commissioned research to provide an early evaluation of the implementation of some measures in the Domestic Violence, Crime and Victims (DVCV) Act 2004. The research focused on the particular measures in the Act aimed at supporting and protecting the victims of domestic violence.

The DVCV Act aims to address many of the recommendations made in the Government's proposals on domestic violence, *Safety and Justice* (Home Office, 2003). A key strategy is more closely integrating the civil and criminal justice systems to enhance the protection and safety of domestic violence victims and their children. The DVCV Act does this through a number of its domestic violence measures; for example by making breach of a non-molestation order a criminal offence, and enabling courts to impose restraining orders when sentencing for any offence. A further area of government attention has been to narrow the 'justice gap' in domestic violence cases, that is reducing the difference between the number of reported offences and the number of convictions, as well as policing improvements (Justice Gap Taskforce, 2002). While there have been a limited number of empirical and theoretically based commentaries regarding the DVCV Act these have not included analysis of the impact of the measures (Edwards, 2006; Hitchings, 2006; Musgrove and Groves, 2007). The exception to this is Platt (2008), which was published as this report was finalised and includes an evaluation of s42a (making breach of a non-molestation order a criminal offence). This research constitutes the first multi-method evaluation of some of the domestic violence measures, focusing on impact.

A linked, but separate, study was carried out to evaluate the implementation of the first Integrated Domestic Violence Court in Croydon (IDVC).<sup>2</sup> The latter has been subject to a separate report (Hester *et al.*, forthcoming). The studies were commissioned at the same time, were conducted by the same research team, and, involved some of the same research participants. The linked study involved a process evaluation of how the IDVC operated in practice against its pre-defined aims, the models on which it was based and the procedures set in place when the court started. It was also intended to consider any differences between the IDVC and a 'typical' (non-specialist) court in their take-up and implementation of

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<sup>2</sup> Croydon IDVC brings together all domestic violence cases having a criminal element and concurrent Children Act or civil injunction proceedings.

the new measures of the Domestic Violence, Crime and Victims Act 2004. However, this did not prove possible as too few cases were handled by the IDVC during the 18-month evaluation period. Thus, the IDVC evaluation was focused on one site, in Croydon, while the evaluation of DVCV Act measures was carried out across two sites, in Croydon and South Tyneside, supplemented by national and other data. This report focuses on the evaluation of the DVCV Act measures.

## 1.2 Evaluation aims

The Department was interested in evaluating the impact of five key features of the DVCV Act:

1. Making common assault an arrestable offence by adding it to the list of offences for which a police officer may arrest without a warrant. [Implemented nationally in January 2006 via Serious and Organised Crime and Police Act 2005.]
2. Significant new police powers to deal with domestic violence including making it an arrestable, criminal offence to breach a non-molestation order, punishable by up to five years in prison. [Implemented nationally July 2007.]
3. Strengthening the civil law on domestic violence to ensure cohabiting same-sex couples have the same access to non-molestation and occupation orders as opposite sex couples, and extending the availability of non-molestation orders to couples who have never lived together or been married. [Implemented nationally July 2007.]
4. Stronger legal protection for victims of domestic violence by enabling courts to impose restraining orders when sentencing for any offence. Until now, such orders could only be imposed on offenders convicted of harassment or causing fear of violence. [Not implemented by end of evaluation period.]
5. Enabling courts to impose restraining orders on acquittal for any offence (or if a conviction has been overturned on appeal) if they consider it necessary to protect the victim from harassment. This will deal with cases where the conviction has failed but it is still clear from the evidence that the victims need protecting. [Not implemented by end of evaluation period.]

Further measures relating to domestic violence, but not part of this evaluation, are outlined in appendix 1.

In order to assess the impact of the measures outlined, including the strategy of more closely integrating the civil and criminal justice systems, the evaluation aimed to:

1. establish baseline data against which to evaluate the implementation of the new domestic violence related measures in the Act;
2. provide an early 'snapshot' (to December 2007) of progress towards the implementation of the new measures of the Act, after a suitable period;

3. identify emerging issues and offer recommendations for policy and (good) practice in relation to implementing the measures, and in relation to improvements that can be made to current data collection.

As indicated above, only one of the new measures, making common assault an arrestable offence had been implemented prior to the evaluation period. Two further measures, making it a criminal offence to breach a non-molestation order and extending the availability of non-molestation and occupation orders, were implemented during the evaluation. The period of the research was extended to take this into account, with the fieldwork continuing until December 2007. Data relating to implementation was collected and analysed for all of these measures. The new measures relating to imposition of restraining orders when sentencing for any offence or on acquittal for any offence were not implemented during the evaluation period. However, it was decided that it would still be useful to ascertain the views of professionals and victims/survivors regarding these measures. Consequently the report covers all five key features of the DVCV Act identified for this early snapshot.

### **1.3 Evaluation method**

As indicated above, the original intention was to have an area with a specialist domestic violence court (SDVC), and an area without a specialist domestic violence court to be used as a comparator. Croydon was chosen as the former as it also formed part of the linked evaluation of the Integrated Domestic Violence Court (IDVC) located there. South Tyneside, which did not have a SDVC, was chosen as the latter because a data sharing protocol (including security clearance to access specific Northumbria constabulary databases), was already in place between the research team and Northumbria constabulary. This enabled ready access. Additionally both South Tyneside and Croydon were chosen as they shared the position of being a satellite to a large city; and because the number of domestic violence incidents reported in each would result in an adequate research sample.

The research method included both quantitative and qualitative elements in order to assess possible trends and to look in more detail at perceptions and experiences. These elements are detailed separately below.

#### **Quantitative data collection, samples and analysis**

The quantitative element provided baseline data, and further data on the throughput, profile and outcomes of cases, before and after implementation of the relevant features of the Act and related legislation. The quantitative element involved two separate aspects:

1. Analysis of the nature and frequency of domestic violence incidents reported to the police in the locations during one period pre- and two periods post-implementation of common assault as an arrestable offence.
2. Analysis of data on non-molestation and occupation orders in the period leading up to and after the implementation of criminalisation of breach of a non-molestation order and the extension of availability of non-molestation and occupation orders.

The purpose of the first aspect of the analysis was to assess the impact of making common assault an arrestable offence. This was achieved by trying to ascertain any changes in the extent to which common assault was being used as an offence, and in comparison with other types of arrestable offences. The research sample consisted of all domestic violence incidents recorded by the police in Croydon and South Tyneside in the month of November in the years 2005, 2006 and 2007 – 1,780 incidents. November was chosen as an ‘average’ month, that is, not near any known peaks or dips for domestic violence reporting. Incidents were identified through police case management databases (a bespoke Domestic Violence Database in South Tyneside and the Crime Report Information System (CRIS) in Croydon). For an incident to be classified as domestic violence it must be ‘flagged’ by the police officer recording the incident. This has been found to be problematic in the past in terms of under-use of the flag by police (Hanmer *et al.*, 1999). However, it is assumed to be a consistent under-use and hence findings based on patterns can still be extrapolated. There were some differences between the two forces in terms of their recording of incidents, with Northumbria police counting individual incidents whereas the London Metropolitan police count victims and witnesses to an incident. This was dealt with in the data cleaning process by collapsing some of the Metropolitan police rows of data.

**Table 1.1: Sample sizes – incidents recorded by police**

	<b>Pre- implementation</b>	<b>Post implementation</b>		
	<b>Nov. 2005</b>	<b>Nov. 2006</b>	<b>Nov. 2007</b>	<b>Totals</b>
<b>Croydon</b>	374	296	378	1,048
<b>South Tyneside</b>	211	274	247	732
<b>Totals</b>	585	570	625	1,780

The original dataset was estimated to provide a sample of 1,000 incidents from 2005 and 2006, which we predicted would provide an adequate sample size. This was based on the estimated number of incidents in November over two years in the two sites, using previous research reports to guide the estimates (see Hester, 2006; Hester and Westmarland, 2007). When the timescale for the evaluation was extended it was decided to continue with the data collection and to include incidents from November 2007. The sample size consequently



expanded to include 1,780 incidents (585 incidents before and 1,195 incidents after implementation of common assault as an arrestable offence, see table 1.1).

A range of incident data was collected to enable tracking of cases through the criminal justice system, to ensure comparability and to provide depth of analysis (see table 1.2). The data was fairly complete with little missing data. However, as the databases are operational policing tools rather than research databases some of the information did change during the research period. In addition, a CRIS change in Croydon (regarding the way non-crime domestic violence incidents are recorded) meant that the 2005 and 2006 data had to be recalculated to be consistent with the 2007 data. Specifically it had to be ensured that individuals identified within CRIS as victims, witnesses, informants or suspects in the same non-crime incidents were not counted separately.

**Table 1.2: Type of incident data collected<sup>3</sup>**

Croydon	South Tyneside
<ul style="list-style-type: none"> <li>• Crime number</li> <li>• Initial classification text</li> <li>• Initial classification code</li> <li>• Date of incident</li> <li>• Date incident reported</li> <li>• Role of person reporting incident (Victim, Informant or Witness) (V/I/W)</li> <li>• Sex of V/I/W</li> <li>• Age of V/I/W</li> <li>• Ethnic appearance of V/I/W</li> <li>• Initial offence</li> <li>• Sex of suspect</li> <li>• Age of suspect</li> <li>• Ethnic appearance of suspect</li> <li>• Whether suspect is known by V/I/W</li> <li>• Whether incident is cleared up</li> <li>• Reason incident cleared up</li> <li>• Whether arrest made</li> <li>• Text description of incident</li> <li>• Final court outcome</li> </ul>	<ul style="list-style-type: none"> <li>• Offender reference number</li> <li>• Log number</li> <li>• Date incident reported</li> <li>• Time of incident</li> <li>• Text description of incident</li> <li>• Who call received from</li> <li>• Whether children involved</li> <li>• Whether social services notified</li> <li>• Whether power of arrest exists</li> <li>• Whether arrest made</li> <li>• What arrest was for</li> <li>• Whether offender charged</li> <li>• Final court outcome</li> </ul>

The incident data were anonymised *in situ* by the police, downloaded into Microsoft Excel and imported into a Microsoft Access database. Court outcomes were collected separately and linked into the main dataset using a series of tracking numbers. Data on withdrawals

<sup>3</sup> Although the fields are named and divided differently, the data collected was broadly similar for the two sites. The differences are due to different police databases with different data fields (Northumbria Constabulary has its own bespoke domestic violence database and Croydon, as part of the Metropolitan Police, uses the CRIS database plus the 142d risk assessment form).



was also obtained through the Crown Prosecution Service (CPS) and imported into the main database. Due to the time delay on cases being concluded some of the November 2007 conviction data was not available by the end of the research. Therefore, the number of convictions should be considered an undercount. Microsoft Access was then used to manage the data and to calculate the descriptive statistics reported in the findings section of this report. Where inferential statistics were needed, the relevant variables were exported into SPSS. However, due to data limitations primarily linked to the short period between implementation of the new measures and data collection, only basic significance testing was conducted using chi-square tests. Once broken down into categories some sample sizes were not big enough to warrant significance testing. Also there was insufficient time for bedding in, which meant that our ability to detect impact was limited.

In order to assess impact of making it a criminal offence to breach a non-molestation order, and extending civil orders to same sex and couples not living together, data on non-molestation applications and orders was collected in the two sites as part of the second aspect. However, there were concerns about the quality of data relating to non-molestation and occupation applications and orders. In South Tyneside, we were happy that the data was accurate as there were no inconsistencies. However, in Croydon we had concerns when two contradictory sets of figures were supplied. Despite investigations by the research team, it was not possible to be certain which of the Croydon November 2007 figures were correct. In addition, we were also concerned that the number of applications and orders was too small in the sample periods to offer even tentative findings. For instance, in November 2006 in South Tyneside only one non-molestation and one occupation order were made. Therefore, we obtained national data from the Economics and Statistics Division of the Ministry of Justice to use in place of the South Tyneside and Croydon data. Although this is the only place we have used national data, we are of the opinion that this has not undermined the analysis as it allowed exploration of underlying trends that would not otherwise be possible. It takes into account that the measures were implemented nationally, although it does not take into account any possibility of local variations.

### **Qualitative data collection, samples and analysis**

The qualitative element involved 56 interviews with professionals at two points in time to ascertain views regarding and possible impacts of the Act. Focus groups and interviews with 38 domestic violence victims/survivors were also carried out at one point, following implementation of the Act, to explore views of the measures implemented and any experiences of these.

Semi-structured interviews were conducted with legal and other professionals working with domestic violence in Croydon and South Tyneside at the beginning and near the end of the research. These interviews were conducted to ascertain general understanding of the DVCV Act, any training individuals had received regarding the Act, and views regarding the individual measures designed to improve responses to domestic violence victims. In Croydon the sample coincided with the stakeholder process interviews relating to the linked IDVC evaluation, and included individuals from the Planning and Management Groups as well as other legal and support agency staff. Although this meant interviewees were asked about both topics the interview schedules were separate, with the DVCV Act questions asked after the IDVC interview. We are confident this had minimal impact on data integrity as the depth of answers did not differ between the two sites. Twenty individuals were interviewed in Croydon between June and October 2006, and 18 were interviewed 12-18 months later, between October and December 2007 (14 with the original sample and 4 replacements). In Croydon interviewees included:

- court and legal professionals (judicial and administrative personnel from the county and magistrates' courts, representatives from HMCS, CPS solicitors, family lawyers),
- Children and Family Court Advisory and Support Service (CAFCASS),
- the police Community Support Unit (CSU),
- the probation service,
- Witness Support, and
- the local Family Justice Centre.

In addition, four advocates took part in the victim/survivor focus groups and we were able to ascertain their views in phase two regarding the measures, although not to ascertain change in their views over time. In one instance the advocate was also a victim/survivor and spoke in that capacity. Other advocates did not take a prominent part in the focus group discussions and only spoke after the victim/survivors had expressed their views, although may have had some impact on the group dynamics as they were already well known to the victims/survivors.

In South Tyneside interviews were carried out with a similar range of professionals, and included individuals from:

- the police,
- Victim Support,
- Witness Support,
- probation,
- magistrates' court, and
- women's support service.

Nine professionals were interviewed between June and October 2006, and nine were interviewed 18 months later. Due to staff turnover only one was from the original sample, although they were from the same professional groups. Impact on data integrity appeared to be minimal as they talked about having had similar perceptions prior to implementation of the measures as earlier respondents had had in phase one.

Table 1.3 shows the number of interviews conducted in each phase across the two research sites. In phase one the interviews were face to face and most took place at the interviewees' workplace. In phase two some of the interviews with individuals already interviewed face to face in phase one were carried out by telephone.

**Table 1.3: Interviews**

	<b>Phase 1</b>	<b>Phase 2</b>	<b>Totals</b>
<b>Croydon</b>	20	18	38
<b>South Tyneside</b>	9	9	18
			56

To develop a sample of victims/survivors and perpetrators to interview regarding the new measures, we worked closely with advocacy and other agencies working with domestic violence victim/survivors across the two sites, and with the legal professionals acting for victims and perpetrators in the IDVC. It was not possible to establish an adequate sample of perpetrators. Most victim/survivors were accessed via some form of domestic violence support or advocacy organisation or service, as these individuals were more likely to have used or be aware of the new measures. It was not feasible to establish the samples until the autumn and winter of 2007 to allow for the implementation and bedding in of the measures that were implemented. The interviews were thus conducted post-implementation of the measures, and it was not the intention to measure change using this data. Gaining participation of victims/survivors is always more difficult and sensitive than arranging interviews with professionals. Additional ethical issues must be taken into consideration. In this instance ethical issues that needed to be taken into account included: protecting anonymity, minimising possible stress to participants, having a carefully selected, experienced research team and having the knowledge and skills to make referrals to support services where necessary (see World Health Organisation, 2001). Establishing samples via advocacy and support projects, and using the facilities of the projects for the interviews and focus groups, meant that the victims/survivors had direct access to further support should they need this following their participation in the research. All victim/survivor transcripts and notes were anonymised, and confidentiality was ensured by not providing detailed examples of the victims/survivors' case histories, nor locations. The research team had extensive

previous experience of conducting research with participants experiencing domestic violence, and were also able to refer participants to other support should this be required.

It proved difficult and very time consuming to establish the sample, and the Croydon sample had to be augmented via a domestic violence support organisation outside the area. The research team was familiar with the organisation and the area, and checks were made to ensure no interventions would be likely to have a large impact on the data. While use of such a sample meant that participants were unable to say anything site specific, they were able to talk more broadly about the measures.

A sample of 38 female victims and survivors were asked their views about the new measures introduced in the DVCV Act. All had either left, were in the process of leaving, or considering leaving violent male partners and had thought about using or were using the criminal or civil justice processes. Where relevant, specific questions were asked about their personal experiences of implementation of the Act. Otherwise, the focus was on their opinions of the changes in theory, with vignettes used to help explain the changes (see appendix 2). A range of methods (focus groups, interviews and paper questionnaires) were used to gain this information and to offer participants more flexibility and assist recruitment. Without this range of methods it would not have been possible to recruit as many victims/survivors to the research within the time period available. The South Tyneside sample consisted of 19 women, with one interview, six questionnaire responses and two focus groups. The Croydon sample consisted of 19 women, accessed via two interviews and three focus groups. Although the depth of answers varied across these methods, respondents provided very similar answers whatever method was used suggesting that their views were remarkably consistent.

All interview and focus group data were transcribed and coded to enable a thematic analysis of responses. The data were initially coded using the questions in the interview schedules to develop broad themes. Following this, interviews were re-read and further themes developed and coded to allow for a broader and deeper analysis. Framework grids, where the coded data is entered into a grid to identify themes and codes (Ritchie and Lewis, 2003), were used to enable comparisons across the data.

The rest of the report describes in more detail the specific measures in the DVCV Act evaluated and the resulting findings.

## 2. Making common assault an arrestable offence

Part 2 of the DVCV Act is concerned with criminal justice measures, which relate to domestic violence but also to violent offences more generally. Within part 2, section 10 amends the Police and Criminal Evidence Act (PACE) 1984 to include common assault in the list of specific offences that may lead to arrest. In practice, section 10 was repealed before it came into force because the term arrestable offence ceased to have effect from January 2006 under sections 110 and 111 of the Serious and Organised Crime and Police Act 2005. These sections replaced section 24 of PACE and allowed for one power of arrest to apply to all offences.<sup>4</sup> In this report we evaluate the impact of the police being able to arrest for common assault in domestic violence cases (i.e. what part 2 section 10 would have constituted had it not been repealed).

The aim of the new measure was to strengthen and clarify police powers and to encourage and back up the positive, pro-arrest policy as put forward in the Revised Home Office Circular 19/2000 and in Association of Chief Police Officers (ACPO) guidance (Centrex, 2004). These documents require police to:

- take positive action in all domestic violence cases;
- exercise any powers of arrest where they exist and where it is necessary and proportionate in order to carry out an effective investigation and/or prevent further offences and;
- to record reasons why an arrest was not made in a domestic violence incident where a power of arrest existed.

A range of reports have emphasised high levels of attrition (whereby a high proportion of recorded incidents 'fall out' of the criminal justice system), and 'no power of arrest' has often been given as a reason by the police for not arresting the suspect (HMCPSI and HMIC, 2004; Hester, 2006; Hester and Westmarland, 2005). Taking this possible reason for attrition out of the equation should therefore result in more arrests and possibly a higher conviction rate, consistent with the Government's agenda to narrow the justice gap.

### 2.1 Findings

#### Views of professionals and victims/survivors

The unanimous view of professionals interviewed in both phase one and phase two of the research, and able to answer this question, was that being able to arrest for common assault was a positive move. Some professionals whose role was unconnected to the criminal

justice system were not able to respond since they were not aware of the change. There was no difference found between the South Tyneside and Croydon interviewees. Participants reported that the new measure had added clarity and given common assault “more clout”. While lack of arrest for common assault had previously been used as a reason by the police as to why an arrest was not made, this was no longer possible.

All of the police interviewees explained that the improvements built on changes that were already in the pipeline. They saw this as one step towards a wider approach to dealing with domestic violence:

*“Before the act was published we were already upping the game. Aiming for a holistic all round approach capable of changing behaviour of individuals.”*  
(Police, phase one, South Tyneside)

The impact of being able to arrest for common assault was, therefore, linked to clarification of good practice rather than as a new approach:

*“There has been some impact but national guidance preceded the Act because it had been building up through ACPO policy guidelines in terms of things like positive arrest. We’ve always had the ability to arrest under general powers of arrest under section 25 (even if later downgraded to common assault) drunk and disorderly or breach of the peace. However the power of arrest has added clarity and has given it more clout. It can’t be given as another reason why an arrest was not made.”*  
(Police, phase one, South Tyneside)

All domestic violence victims/survivors who participated in the research supported this measure, the general view being that it would enable a perpetrator to be removed from a situation thus giving them the time to “sober up” or “calm down”. Examples of common assault were given to victims/survivors to help them understand the change (e.g. via vignettes, see appendix 2) although it was clear in some cases that what they were expressing support for was a positive arrest policy more generally (i.e. for all domestic violence not specifically common assault).

## Quantitative findings

With implementation of common assault as an arrestable offence we were interested in discovering whether there was an overall increase in the frequency of arrest in domestic violence related offences (although also bearing in mind the views of interviewees that the increase might be limited). Since most areas are upgrading responses to domestic violence in line with the Government Domestic Violence National Plan and the new Violence Action Plan, it is difficult to attribute any changes directly to any one section of an Act using

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<sup>4</sup> With the exception of a limited number of exemptions.

quantitative data. However it is still relevant to measure change and then look for possible explanations for any change (which may then be triangulated with qualitative data).

Data collected from South Tyneside police, on case progression through the criminal justice system in the month of November, shows that there was little difference proportionately in the number of arrests – which varied from 31% of incidents in 2005, to 29% in 2006 and to 36% in 2007 (see table 2.1 and figure 2.1). This slight difference was not significant (Chi-square:  $p=0.406$ ).

Looking at attrition, the data available indicated 6% of incidents resulted in conviction in 2005 (12 convictions), 4% in 2006 (11 convictions) and 3% in 2007 (8 convictions). This may suggest a small decrease, however the figures are small and it should be noted that the conviction data for 2007 was not complete (and therefore as indicated above could represent an under-count). Alongside this, there was some indication of an increase in the use of cautions. Although the numbers are again small, there is a rise in the use of cautions from 7 in 2005 (3% of incidents), to 13 in 2006 (5% of incidents) and 14 in 2007 (6% of incidents).

**Table 2.1: South Tyneside – incident progression through the CJS<sup>5</sup>**

	Incidents recorded	With power of arrest (% of incidents)		Arrests (% of incidents)		Cautions (% of incidents)		Charges (% of arrests % of incidents)			Convictions (% of charges % of incidents)		
<b>2005</b>	211	74	35%	66	31%	7	3%	30	45%	14%	12	40%	6%
<b>2006</b>	274	88	32%	79	29%	13	5%	23	29%	8%	11	48%	4%
<b>2007</b>	247	96	39%	90	36%	14	6%	27	30%	11%	8	30%	3%

<sup>5</sup> Percentages as proportion of incidents is given throughout the table. This shows the overall pattern of attrition. However, the CPS tends to measure convictions as a proportion of charges and this is included in the table.

**Figure 2.1: South Tyneside - incident progression through the CJS**



In Croydon the overall picture is also not clear. The number of incidents crimed (that is, deemed to constitute a criminal offence<sup>6</sup>), arrested, charged or cautioned and convicted varied between years (table 2.2 and figure 2.2). There were 74 arrests (20% of incidents) in 2005, rising to 108 (36% of incidents) in 2006 and with a decrease to 70 (19% of incidents) in 2007. The overall number of incidents resulting in conviction also seemed to vary, with 12 convictions in 2005 (3% of incidents), 16 (5% of incidents) in 2006 and 7 (2% of incidents) in 2007 (see figure 2.2). It should again be noted that the conviction data for 2007 was not complete and therefore may be an under-count, and there were a limited number of cases. Similar to South Tyneside, there was an increase in the use of cautions in Croydon. There were 12 cautions in November 2005 (3% of incidents), rising to 44 (15% of incidents) in November 2006 and 42 (11% of incidents) in November 2007.

<sup>6</sup> Crimed incidents were used as a proxy for power of arrest here. CRIS does not record power of arrest.

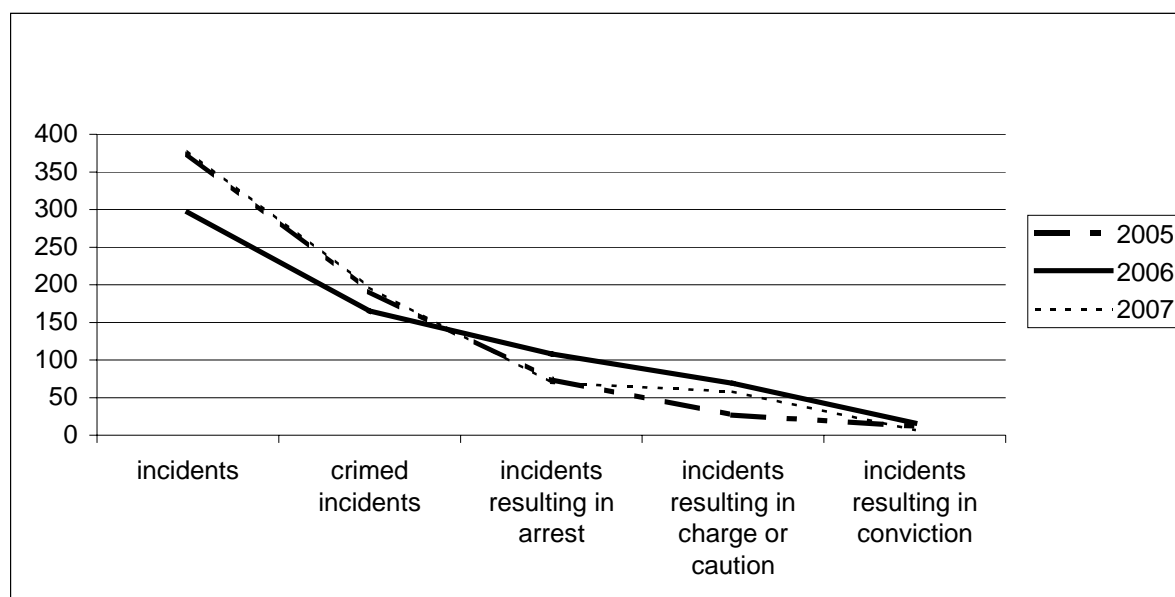


**Table 2.2: Croydon – incident progression through the CJS**

	Incidents recorded	Crimed (% of incidents)		Arrests (% of incidents)		Cautions (% of incidents)		Charges (% of arrests % of incidents)			Convictions (% of charges % of incidents)		
<b>2005</b>	374	191	51%	74	20%	12	3%	15	20%	4%	12	80%	3%
<b>2006</b>	296	165	56%	108	36%	44	15%	25	23%	8%	16	64%	5%
<b>2007</b>	378	196	52%	70	19%	42	11%	16	23%	14%	7	44%	2%

During 2005 new charging arrangements were brought in, involving statutory charging by the CPS rather than the police. This may have had an impact on the proportion of charges across the period, and may also have had a bearing on the apparent increase in use of cautions by the police in 2006 and 2007. However, we did not investigate this aspect within the research and therefore cannot provide evidence of impact regarding this change.

**Figure 2.2: Croydon - incident progression through the CJS**

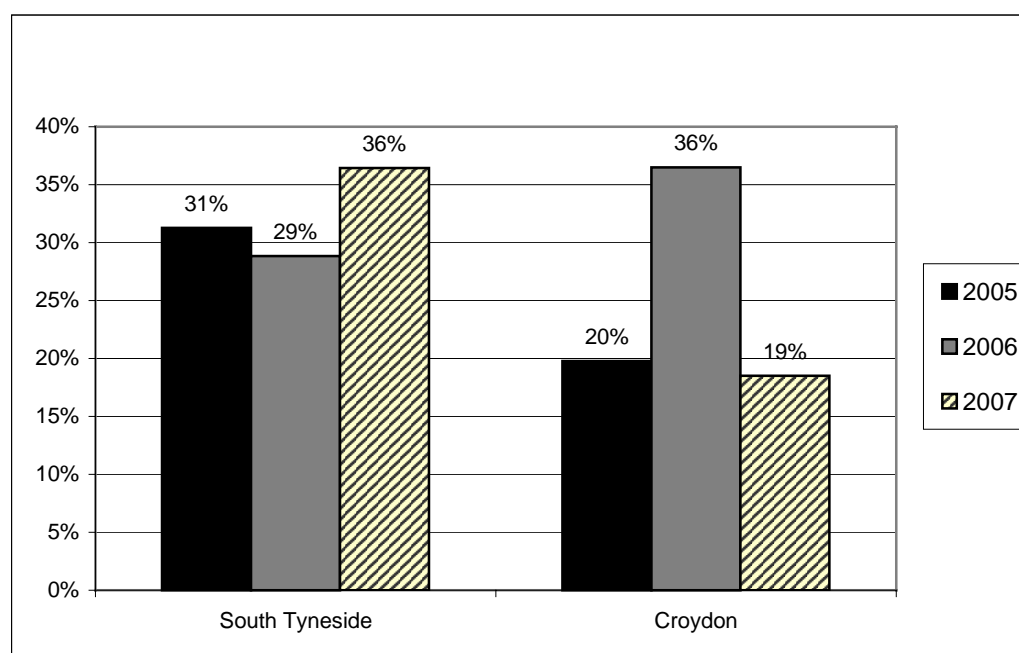


Focusing more specifically on the arrest rates as related to incidents recorded by the police, figure 2.3<sup>7</sup> compares these findings, providing number of arrests as a proportion of overall incidents across the two sites and across the three time periods. There were no discernible patterns in either site. In South Tyneside there was a slight drop in the proportion of incidents resulting in arrest the November following the change, but by the following year an increase was seen. Croydon saw a huge increase in the proportion of incidents resulting in arrest the November following the change, but this was not sustained the following year.

<sup>7</sup> The proportions shown in figure 2.3 are related to the actual number of arrests indicated in tables 2.1 and 2.2. These are, for South Tyneside, 66/211 in 2005, 79/274 in 2006 and 90/247 in 2007. For Croydon, the figures are 74/374 in 2005, 108/296 in 2006 and 70/378 in 2007.

These features need to be examined over a longer period before any significant patterns may be ascertained.

**Figure 2.3: Arrests as proportion of all incidents**



However, this is only part of the picture. Due to the wide range of offences that can fall under the umbrella of domestic violence, different areas tend to 'favour' the use of different laws to tackle domestic violence in their area. Previous research in the North East, for example, has demonstrated that the criminal justice system in different areas vary in the extent to which they use particular offences. For instance, use of public order offences as an appropriate response to domestic violence rather than offences related to violence against the person (Hester, 2006). It is relevant here to consider this in terms of how common assault is being applied, and whether use of common assault has varied depending on its status as an arrestable offence.

Tables 2.3 and 2.4 list the range of domestic violence offences applied across the three years for South Tyneside and Croydon. They show that South Tyneside used a narrower range of offences than Croydon (15 compared with 24). However, both areas tended to rely most heavily on a smaller range (in all three years 78% of South Tyneside incidents and 84% of Croydon incidents are spread between four or five categories). South Tyneside relied mostly (in decreasing order) on Breach of the Peace, s47 assault (ABH), criminal damage and common assault and criminal damage. Croydon used (in decreasing order) s47 assault (ABH), common assault, criminal damage and harassment.

**Table 2.3: Domestic violence offence arrested for – South Tyneside**

	Nov. 2005	Nov. 2006	Nov. 2007
Abandon child under 2	1	0	0
Breach of bail conditions	1	2	1
Breach of non molestation order	0	0	1
Breach of the peace	34	37	47
Common assault	3	11	11
Criminal damage	6	11	6
Drunk & disorderly	5	3	4
False imprisonment	0	1	1
Harassment	0	2	2
Possess offensive weapon	0	0	1
S20 assault (GBH)	1	0	0
S47 assault (ABH)	13	7	16
Threats to damage	2	0	1
Threats to kill	1	1	1
Unlawful wounding	1	1	1
<b>Totals</b>	<b>68</b>	<b>76</b>	<b>93</b>

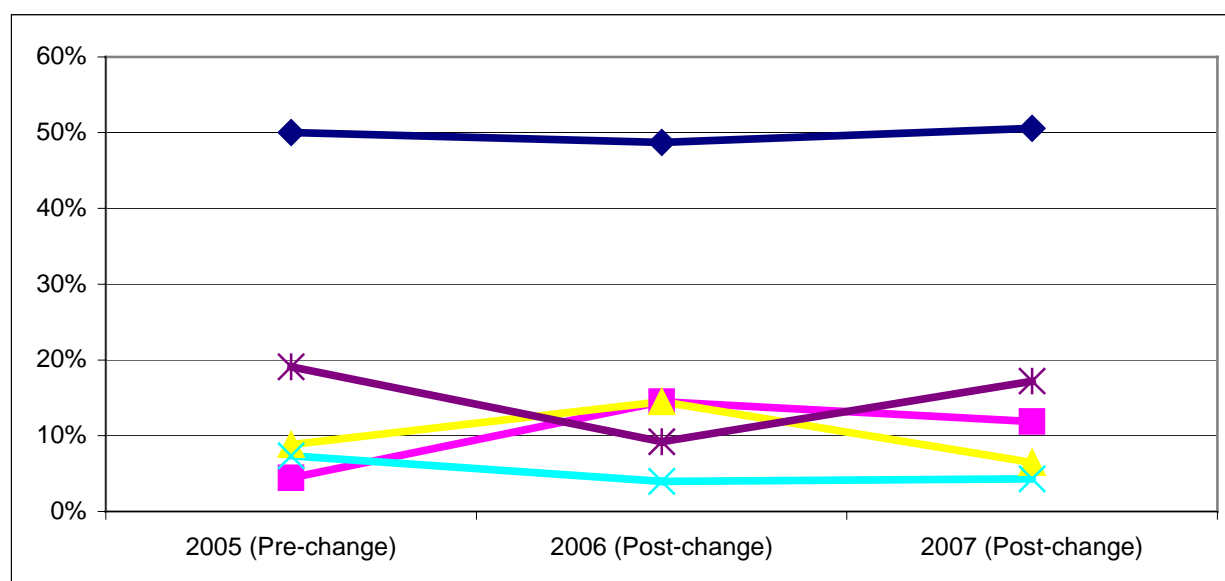
**Table 2.4: Domestic violence offence arrested for – Croydon**

	Nov. 2005	Nov. 2006	Nov. 2007
Abuse position	0	1	0
Affray	0	2	0
Arson	0	0	1
Breach of injunction	1	0	1
Breach of a restraining order	1	0	0
Burglary of dwelling	3	0	3
Common assault	48	49	66
Criminal damage	35	22	29
Communications act offences	5	4	7
Deception	1	1	0
False imprisonment	1	0	0
Harassment	15	14	15
Possession of amphetamines	0	0	1
Rape of female	0	1	1
TDA	0	2	1
Threat to kill	8	3	8
Theft	6	7	2
Public order offence	5	0	0
Other fraud	1	0	0
Other offence	0	1	0
Race discrimination	0	2	0
S20 assault (GBH)	6	1	2
S47 assault (ABH)	70	54	59
Witness Intimidation	0	1	0
<b>Totals</b>	<b>206</b>	<b>165</b>	<b>196</b>

The data also indicate that the proportion of incidents recorded as common assault went up over the three years in both South Tyneside and Croydon. Table 2.3 shows that in South Tyneside the proportion increased from 4% (n=3) in 2005 to 14% (n=11) in 2006 but dropped slightly to 12% (n=11) in 2007. In Croydon the proportion of common assaults rose from 23% (n=48) in 2005 to 30% (n=49) in 2006 and then rose again to 34% (n=66) in 2007. These numbers are clearly small, particularly for South Tyneside, however they are consistent and support a tentative finding of slightly increased use of common assault.<sup>8</sup> The decrease in ABH, which was especially apparent in Croydon, may have been related to the use, as documented in previous research (Hester, 2006), of using ABH to secure an arrest before common assault became an arrestable offence, followed by a charge of common assault to reflect the actual nature of the offence. The new measure may therefore have helped to deal with this anomaly.

In South Tyneside it might be expected that once it was possible to arrest for common assault this would replace use of Breach of the Peace. The latter would not be relied upon so heavily since there would be an alternative offence to arrest under. However, this did not occur in practice. The change in the use of common assault did not appear to have a parallel impact on the use of Breach of the Peace. Table 2.3 showed that the proportion of arrests for Breach of the Peace remained stable (50% in 2005, 49% in 2006 and 51% in 2007). Arrests for other frequently used offences are also shown in figure 2.4, however the numbers involved are small (as shown in table 2.3).

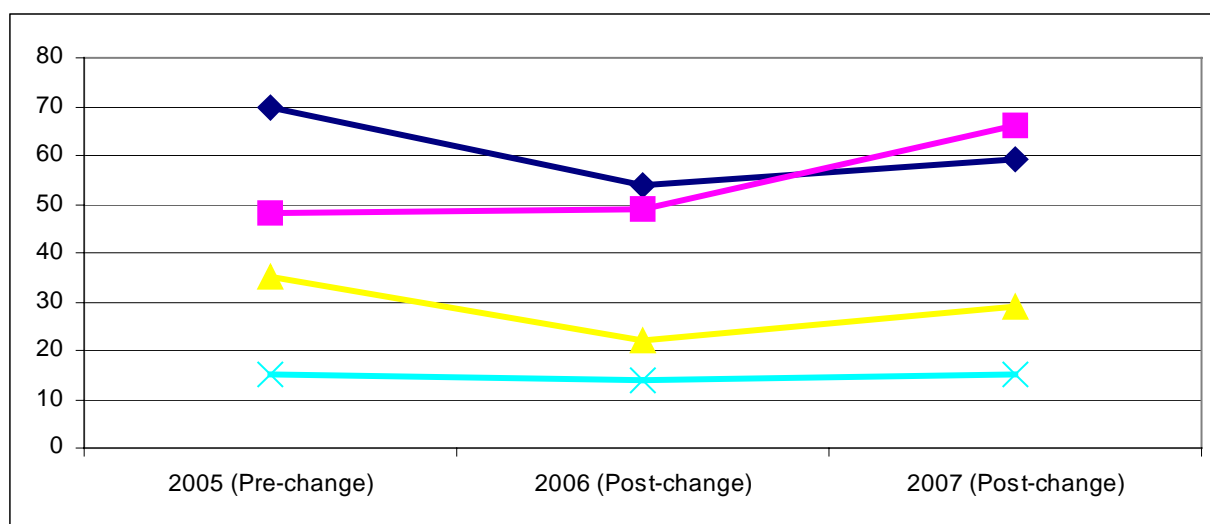
**Figure 2.4: South Tyneside arrests for frequently used offences - changes over time**



<sup>8</sup> No statistical tests were run on these data since the time period was not long enough to allow a meaningful linear regression to be conducted and the number and size of categories meant a chi-square was not appropriate. The same applies to the equivalent data for Croydon in figure 2.5.

By contrast, in Croydon the proportional increase in use of common assault happened alongside a decrease in use of both criminal damage and s47 assault (ABH), suggesting that these offences may be being relied upon to a lesser extent to enable arrest (figure 2.5). Given the timing of these changes it is likely that they are linked to common assault becoming an arrestable offence.

**Figure 2.5: Croydon arrests for frequently used offences - changes over time**



## 2.2 Summary

This chapter has indicated some tentative findings:

- Professionals viewed being able to arrest for common assault as a positive move that provided clarification of existing good practice.
- Arrests as a proportion of incidents did not show an increase in South Tyneside. In Croydon the proportion of incidents resulting in arrest showed an increase between 2005 and 2006 and decrease from 2006 to 2007. These features need to be examined over a longer period before any significant patterns may be ascertained.
- The proportion of incidents recorded as common assault went up over the three years in both South Tyneside and Croydon. While the numbers are small, especially in South Tyneside, they support a tentative finding of an increasing use of common assault since this became an arrestable offence.
- In South Tyneside the increase in use of common assault did not affect Breach of the Peace being used as the main arrestable offence. By contrast, in Croydon the increased use of common assault paralleled a decrease in the use of other arrestable offences (in particular ABH and criminal damage), indicating that the police may previously have been using other offences in order to procure an arrest. Making common assault an arrestable offence may thus have helped to overcome this anomaly.

### 3. Criminalising the breach of a non-molestation order

Part 1 of the DVCV Act concerns amendments to Part 4 of the Family Law Act 1996. Part 1, section 1 came into force on 1 July 2007 and created a new offence of breaching a non-molestation order:

“A person who without reasonable excuse does anything that he is prohibited from doing by a non-molestation order is guilty of an offence”.

(Part 1, section 1.1)

The new offence is subject to a maximum of five years in prison.

Issuing non-molestation orders without any power of arrest has long been criticised as ‘not worth the paper they’re written on’ by those working with domestic violence victims (Barron, 1990). The DVCV Act may be seen to have addressed this longstanding critique, while also consolidating an emerging trend, by criminalising the breach of all non-molestation orders. Gore (2007), for instance, talks of how the criminalisation of breach may be seen as positive, both symbolically and practically, and as reflective of society’s increased understanding of the seriousness of domestic violence and emphasis on protection of victims.

Commentary by legal professionals and academics in the period leading up to, and at the time of, implementation of the new offence of breaching a non-molestation order, also indicated that there were differing views as to the possible impact of the measure. Concerns have been raised regarding the practical implementation of the DVCV Act and of the balance between the rights of victims and offenders, in particular the problems that may arise with regard to differing standards of proof between the civil and criminal courts (Gore, 2007). The making of a non-molestation order is according to the civil standard of proof but there may be pressure to raise this so that it complies more closely with the criminal standard.<sup>9</sup> Others have been critical of the new measure, seeing it as potentially reducing choice for the victim, and thus undermining victim empowerment in favour of prosecution of the perpetrator. It has also been suggested that victims may be reluctant to use the measure if it led to partners having a criminal record or to carry the ‘stigma of a conviction’ (Hitchings, 2006, p. 95). Research published as this report went to press provided evidence of a decrease in the number of applications – between 15 and 30% reductions across six county courts – when the six-month

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<sup>9</sup> Similar issues were raised in relation to the criminalisation of breaches of ASBO’s, and more particularly in the heightened standard of proof in the House of Lords consideration of *Re H (Minors) (Sexual Abuse: Standards of Proof)* [1996] AC 563.

period prior to implementation (1 January 2007 - 30 June 2007) was compared with the following six-month period (1 July 2007 – 31 December 2007) (Platt, 2008).

It should be noted that fieldwork for the evaluation, while starting in June 2006, was completed by December 2007, and the period for evaluating this measure was therefore brief.

## 3.1 Findings

### Views of professionals and victims/survivors

There was a marked contrast between professionals regarding knowledge of criminalisation of breach of a non-molestation order. Those engaged directly in the legal process (as judges, magistrates, barristers, solicitors, legal advocates and to a lesser extent probation staff and the police), tended to be aware of the forthcoming measure in phase one and to know something about the measure, and then to have a view regarding actual impact in phase two. Professionals working with families experiencing domestic violence, but not directly engaged in the legal process (such as social workers, witness care, family court advisors and local authority staff), tended to have no knowledge of the new measure nor any view regarding impact.

The professionals in the former group expressed differing views regarding the impact of the criminalisation of breaches. Across phases one and two some professionals, especially probation officers and solicitors, thought that as it had always been possible to attach a power of arrest to an injunction anyway, little impact would be expected. In phase one it was anticipated in interviews with court management staff that there would be a reduction in county court case loads, but this had been perceived as negligible by phase two.

Others argued in phase two that criminalisation had had an impact but disagreed as to whether this impact was positive or negative. Most of those who argued that the impact had been negative appeared to do so based on a perception of falling numbers of applications (this is discussed further below in relation to quantitative trends). One advocacy service manager thought that they were seeing fewer victims wanting to pursue non-molestation orders because of concerns about criminalisation, although they had no statistics to back this up. This view was in any case disputed by the majority of advocates taking part in the research, in both locations. They said that victims using their services generally welcomed the new measure, and that it had encouraged more women to report breaches. It was the perception of the judiciary and court staff in one area that there were fewer applications. They attributed this to the criminalisation of breaches, although the evidence was

inconclusive as two sets of figures provided to the research team by the same court showed both increase and decrease in applications over the same period. One interviewee felt that the impact had been negative because, while the measure had resulted in people being more willing to report breaches than they had been before, the practical impact had been “nil”. It was felt that the court was not taking a more serious view of breaches, that is did not appear to apply stiffer penalties. She found this very problematic because of the message that was being sent out to both victims and perpetrators as a consequence.

There was also uncertainty over whether any reduction could be directly attributed to the DVCV Act as such, or whether it was the result of the decrease in people eligible for legal aid. Some legal advisors in particular attributed a decrease in applications to difficulties in obtaining legal aid. It was generally perceived by solicitors that where criminal proceedings are in hand, it is impossible to obtain public funding for the costs of a civil application. It is undoubtedly the case that financial eligibility for legal aid has decreased, and the costs of obtaining a civil injunction range between £2,500-£8,000. As noted in the linked report about the Croydon IDVC evaluation, respondents described how Croydon County Court has as a consequence experienced increasing numbers of applicant litigants in person and there have been plans to set up special procedures and assistance for those unable to afford the costs of legal representation (Hester *et al.*, forthcoming). Yet the criminalisation of breach also means that at least this aspect does not add to the financial burden of victims/survivors. As one of the victims/survivors interviewed explained:

*“It’s better financially for me obviously because it’s not my money taking him back to court.”*  
(Domestic violence victim/survivor, phase two)<sup>10</sup>

A number of professionals were concerned about the practical implications associated with the criminalisation of breaches. In particular the phased entry whereby measures in the Act were being implemented at different times, confusion regarding when the new or old law would apply, confusion about use of both civil and criminal procedures, and police awareness of the changes. These aspects were mentioned in relation to both locations. One solicitor expressed concern in phase one, that as there would no longer be power of arrest added to a non-molestation order (since all breaches would be criminal offences from July 2007) the police might be more reluctant to arrest if they were unsure of the new powers. The police themselves talked about lack of training on this aspect of the Act both before and after implementation, and how they found the “*deluge of new legislation*” difficult. They were less clear about this measure in the Act than they were about common arrest becoming an arrestable offence. It should be noted that police guidance for the particular

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<sup>10</sup> Victim/ survivors are not identified by location to ensure confidentiality.



measures evaluated in this research had not been issued by the end of the evaluation period, although the National Policing Improvement Agency issued brief guidance on breaches of non-molestation orders after the research was completed (ACPO, 2008).<sup>11</sup> Transitional cases where the original order pre-dated implementation of this measure appeared particularly prone to confusion. For instance, in one of the cases observed at the IDVC, there was lack of clarity as to whether the injunction in force was an extension of the original one (from before July 2007) or a new one that would fall under the new measure. One of the solicitors interviewed in phase two also talked about there still being “a lot” of confusion about the extent to which the new measure would apply in civil or criminal courts, and that this needed to be clarified through experience:

*“I think people are still very worried about pursuing people in two arenas. They’re worried about – if you deal with someone for criminal breach of a civil order, are you then affecting the ability of the civil court to exercise their jurisdiction over it? I don’t think we feel there’s been enough cases going through to actually decide that point...it needs to be ironed out...whether...we should always have criminal breach taking priority.”*

**(Solicitor, phase two, Croydon)**

The impression was that the police were also finding this confusing, and appeared to be bringing cases of breach to the CPS along with other charges, because they were more confident about the latter:

*“My gut feeling is that police officers are finding it all too confusing... I think what they’re tending to do is dealing with the civil breach within the time limit and then charging them...or bringing them to the CPS with substantive charges on matters other than breaches. So I don’t see any cases where a criminal breach is the only thing that can be charged. He might be breaching an injunction just by standing outside her house – I don’t see those coming through as a criminal breach. I see ‘he hit her’ which comes through as a common assault – which also happens to be a breach.”*

**(Solicitor, phase two, Croydon)**

Interviews with victims/survivors also brought to the fore issues regarding police knowledge of the new measure. A few of the victim/survivors had seemingly been given incorrect or unclear information. In one instance the police officer was not aware whether an injunction had a power of arrest nor by what date a breach would generally be considered a criminal offence. One victim/survivor had been advised to get an injunction but the police could not answer her questions regarding enforcement. Another victim/survivor talked of there being some confusion and caution on the part of the police:

*“...but, then the police have to have absolutely 100% rock solid evidence before they’ll arrest him. He breached it on Monday...at 4 o’clock I get a phone call to say that he is in the road sitting outside the childminders. But*

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<sup>11</sup> Police circulars were issued for aspects of the DVCV Act not evaluated here: circulars 9/2005 (The Domestic Violence, Crime And Victims Act 2004: The New Offence Of Causing Or Allowing The Death Of A Child Or Vulnerable Adult) and 24/2005 (The Domestic Violence, Crime And Victims Act 2004: Provisions For Unfitness To Plead And Insanity).

*because I didn't witness the breach and the childminder did, it's kind of not rock solid – but the fact that he was there and he's not allowed to be in that road at that time – and they said 'Yes – well we'd love to re-arrest him because it's another breach, but you didn't witness it'."*

**(Domestic violence victim/survivor, phase two)**

However, others praised the police and their handling of breaches since the new measure was implemented. In one area the police were described by respondents as having generally been pro-active and applied tight bail conditions in situations of breach. It also emerged from focus group discussion of the women's experiences of the measure that there were instances of perpetrators appearing more likely to end up in court as a result of breach of a non-molestation order than on the basis of assault charges. In one instance, the perpetrator was charged with breach while the original assault charge against him was dropped on the grounds of there being "*no evidence*". While the victim/survivor involved was unhappy that it was not possible to proceed with the assault charge, she was glad that it had at least been possible to do so in relation to breach.

As indicated earlier, some professionals reported that victims/survivors welcomed the criminalisation of breaches and said that it was encouraging them rather than putting them off reporting breaches. This was echoed generally in the interviews with victims/survivors who were mainly positive about the measure. They perceived it as forcing the police's hand to make them "*do something*", and that the breach would be treated more seriously. They felt this would send out a message that the perpetrator "*couldn't get away with it so easily*". Some of the women concerned with lack of enforcement had, prior to the implementation of the new measure, decided not to pursue a non-molestation order. They were more positive about the new measure, and would now consider this, but only if they could be assured that any breach would be enforced. For instance:

*"I think it is a good idea, so long as they enforce it."*

**(Domestic violence victim/survivor, phase two)**

However, it was also clear that by 'enforcement' they did not mean a conviction resulting in merely a "*little fine*", but that there should be a more serious outcome.

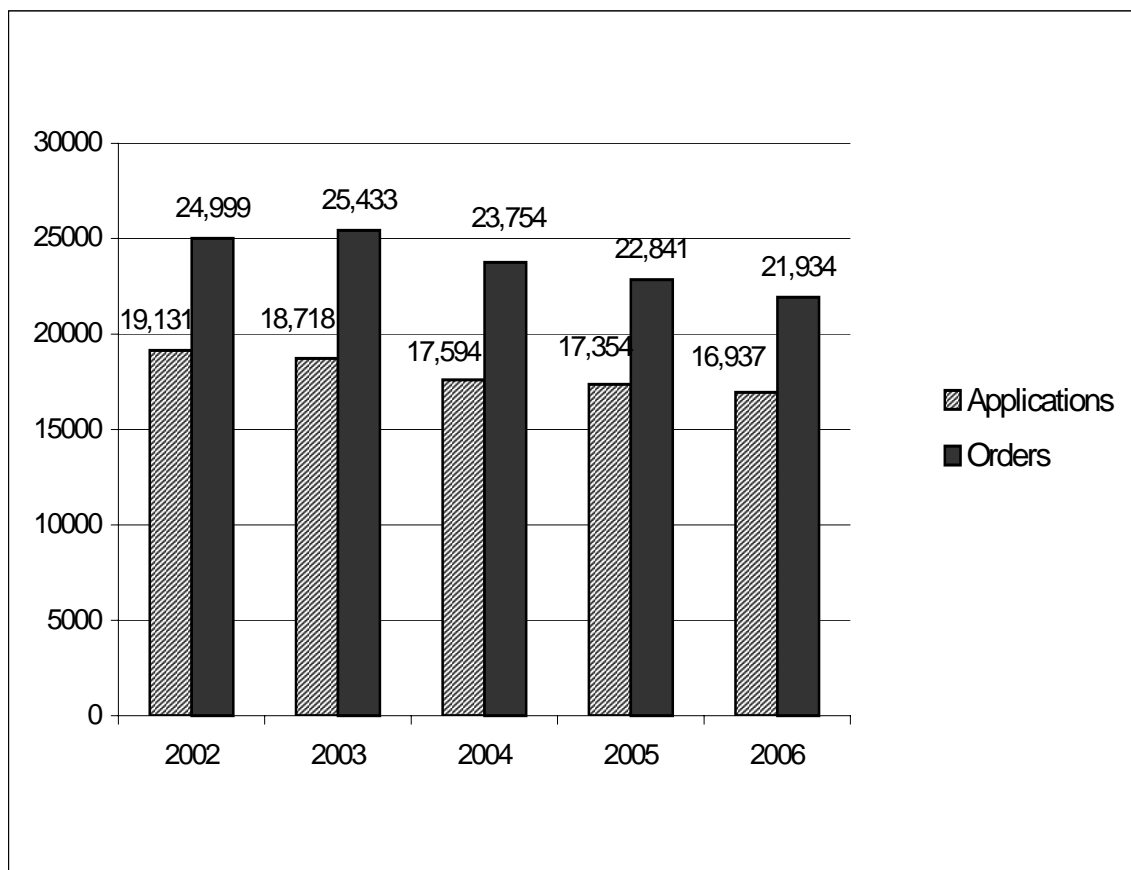
## **Quantitative findings**

### **Non-molestation orders prior to the DVCV Act**

To provide baseline and contextual data for an analysis of impact of the DVCV Act measure, we examined national data on non-molestation orders from 2002 to 2006. Analysis of data obtained from the Economics and Statistics Division of the Ministry of Justice (HMSO, 2007) indicates that in the years prior to the DVCV Act, there was a steady decrease in the number

of non-molestation applications made and orders granted (figure 3.1).<sup>12</sup> There are more orders than applications as the court also has power to grant orders under the Family Law Act (FLA) 1996 of its own motion, that is without application (FLA 1996, s33(8) for occupation orders and s42(2)(b) for non-molestation orders).

**Figure 3.1: Number of non-molestation applications and orders**



Edwards (2001), also using national data supplied by the Department, suggests that this trend had already begun by 1994 and that the FLA 1996 had therefore not been as effective in increasing use of civil protection as had been anticipated.<sup>13</sup> She identifies three possible reasons for the lack of impact on non-molestation orders, although impact of each is unclear: changes in legal aid criteria and eligibility may deter women from seeking protection due to increased costs; increasing use of criminal approaches in favour of civil remedies; and refusal by judges to make an order due to reluctance to attach a power of arrest. Alongside the decrease in non-molestation orders and applications, Edwards found what she calls “a

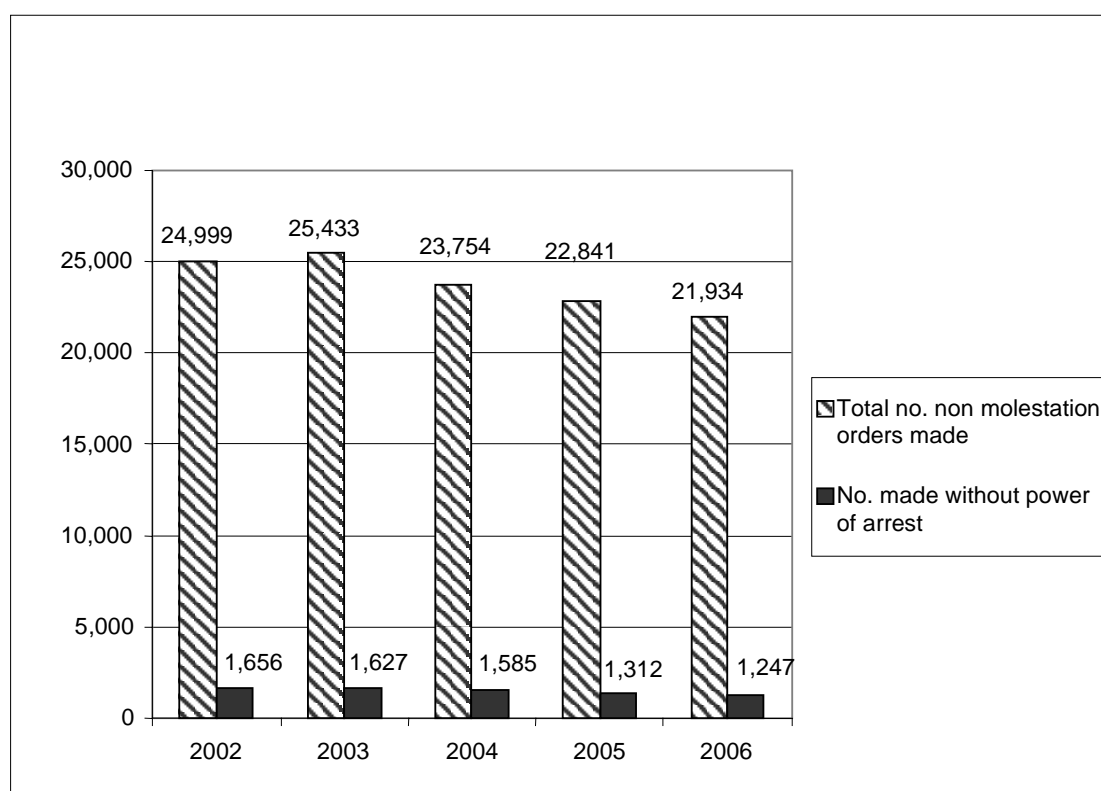
<sup>12</sup> Both figures 3.1 and 3.2 are based on data obtained from the Economics and Statistics Division of the Ministry of Justice (HMSO, 2007).

<sup>13</sup> Edwards' (2001) figures regarding non-molestation orders granted, from *Judicial Statistics*, are as follows: 1994: 24,566, 1995: 22,454, 1996: 19,707, 1997: total not available, 1998: 19,365, 1999: 18,465. The implementation of the Family Law Act 1996 did not change this. By contrast, there was a large increase in occupation orders granted following the FLA 1996.

dramatic increase in ouster orders (now occupation orders) granted” (2001, p. 198), although only some of these orders applied to personal protection in domestic violence cases.

At the same time it has become the norm for non-molestation orders to be made with a power of arrest. This is in sharp contrast to the days before the FLA 1996 when courts were reluctant to attach a power of arrest to the measures within the Domestic Violence and Matrimonial Proceedings Act 1976 and the Magistrates Courts Act 1978, probably because arrest was seen as a draconian measure which unnecessarily involved the police in a civil and family matter (Edwards, 2001). However, by the end of the 1990s *Judicial Statistics* data shows that 80% of all FLA 1996 non-molestation orders granted had a power of arrest attached (Edwards, 2001). Our analysis of national data indicates that this figure has continued to rise over recent years and those issued without a power of arrest were a small minority (accounting for just 6% of orders in 2006). The trend since 2002 is shown in figure 3.2.<sup>14</sup> The DVCV Act measure thus cements a longer-term trend.

**Figure 3.2: Proportion of non-molestation orders with power of arrest**



<sup>14</sup> Based on data obtained from the Economics and Statistics Division of the Ministry of Justice (HMSO, 2007).

With regard to the current evaluation, these trends need to be borne in mind in order to contextualise any impact of the criminalisation of breach of a non-molestation order. They suggest that further consolidation of previous trends may be the most likely outcome and that any large shifts would not be expected. At the same time, the issues raised by the interviews and literature also need to be considered, in particular whether victims are **more** likely to pursue non-molestation orders because they provide increased protection, or whether victims are **less** likely to pursue non-molestation orders because they do not want to criminalise partners. In other words, has there been a further decrease in non-molestation orders or has the trend been in the opposite direction since the new measure was implemented?

### Quantitative data after implementation of the DVCV Act

County court statistics from South Tyneside revealed very few non-molestation orders being made. Using the same sample month as for the criminal data, November 2005 saw just 6 non-molestation orders granted (all with power of arrest attached) and 2 occupation orders. November 2006 saw just one non-molestation order granted (again with power of arrest attached) and one occupation order. No applications were made for warrants of arrest in November for either year and no warrants were issued. As shown in table 2.3, in November across the three years there had only been one arrest for breach of a non-molestation order (in 2007).<sup>15</sup> These numbers are clearly too small to draw any conclusions.

As indicated from discussion of the interviews (above), the data on non-molestation and occupation applications and orders in Croydon was unclear, with two quite contradictory sets of figures being supplied. Therefore, as stated in chapter 1, national figures were obtained from the Economics and Statistics Division of the Ministry of Justice (HMSO, 2007) in an attempt to clarify whether there was:

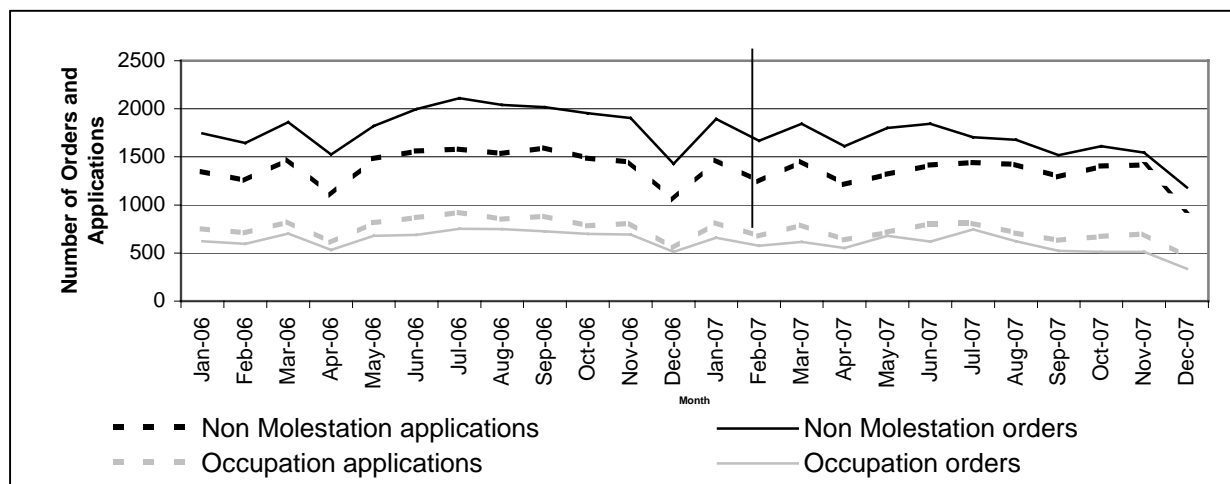
- a) any reduction in use of non-molestation orders, and
- b) whether this reduction could possibly be attributed to the DVCV Act (i.e. was there a sharp drop after July 2007 when the measure came into force?).

This data is shown in figure 3.3, which includes applications and orders made. A parallel line is drawn through the graph at the point of July 2007 to indicate when the change was made.

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<sup>15</sup> This case has been adjourned until the end of March 2008 so the outcome was not known at the time of writing.

**Figure 3.3: Non-molestation and occupation applications and orders pre- and post July 2007**



The figure shows that applications and orders for non-molestation and occupation orders follow similar patterns. There is quite a lot of monthly variation, and the two largest 'dips' are probably due to solicitor's offices being closed during the Christmas/New Year break. If the number of non-molestation applications in the four months after the introduction of the new measure in July 2007 is compared with the same four months in the previous year, a decrease in both applications and orders can be seen. This echoes Platt's (2008) findings. Applications fell from 6,195 in July-October 2006 to 5,560 for the same months in 2007, representing a fall of 10%. The number of orders also fell, from 8,112 in July-October 2006 to 6,506 for the same months in 2007, representing a fall of 20%. Therefore, there was a reduction in the number of applications and orders following July 2007 when the new measure was implemented but this reduction was more pronounced for orders than it was for applications. The decreases are larger than in previous years. It is possible that this shift is related to the implementation of the DVCV Act, however a longer time period would be needed to confirm whether or not any changes are a direct consequence of the new measure within the DVCV Act, including confusion regarding implementation. It is also possible that this data simply indicates a further consolidation of the previous downward trend.

It must also be remembered that the DVCV Act actually **extended** the availability of non-molestation and occupation orders and hence we would expect to see an increase in orders granted and not a decrease overall. This is discussed further in the next chapter.

## 3.2 Summary

The period for evaluation of the criminalisation of breach of a non-molestation order was only brief, from July to November 2007, and this needs to be borne in mind in relation to the findings.

- Professionals expressed concerns about the phased entry of the new measure with different time limits for different jurisdictions, which was causing confusion among legal professionals and the police.
- Views differed among professionals as to the impact of the criminalisation of breach of a non-molestation order on applications and orders:
  - some expected little impact as it had always been possible to attach a power of arrest to an injunction anyway;
  - those engaged with the court process felt that there had been a reduction in applications for non-molestation orders and orders granted since July 2007 either due to both a reduction in the availability of legal aid and the criminalisation of breaches, or because victims were concerned about potential imprisonment that follows a breach;
  - most advocates indicated that victims/survivors welcomed the new measure.
- Victims/survivors were generally supportive of heavier sanctions for breaches, and were especially concerned with enforcement.
- Following criminalisation of breach of a non-molestation order the number of applications and orders decreased when compared with the previous year. However, with such a short trend it is not possible to conclude whether this is linked to the DVCA Act or whether it represents a consolidation of previous trends.

## 4. Extending availability and use of protection orders

### 4.1 Extending the availability of non-molestation and occupation orders

Part 1 of the DVCV Act also extends the availability of non-molestation and occupation orders, by clarifying the position that ‘cohabitants’ includes same sex couples, (Part 1, section 3) and extending the provisions to non-cohabiting couples (Part 1, section 4). The Act requires the parties to be in or have been in:

“...an intimate personal relationship with each other which is or was of significant duration”.  
(Part 1, section 4)

The debates and literature on the Act suggests that this measure is generally supported (Hitchings, 2006), although some might question how the courts will interpret “intimate”, “personal” and of “significant duration” (Edwards, 2006).

### Findings

With the extension of the availability of civil orders it might be predicted that there would be an increase in the number of orders made, or at least a reduction in the rate at which applications and orders are currently falling. As discussed in the previous chapter, our tentative quantitative findings indicate that both applications and orders have shown a decrease when compared to the same period in the previous year. With regard to same sex partners, all agencies interviewed for the research highlighted that very small numbers of same sex couples seek support. This is echoed by previous research in the UK (Donovan and Hester, 2007). The Croydon Family Justice Centre, for example, said that they had seen about five same sex couples since July 2007 and, although this appears a low number, it actually constituted an increase as previously they had seen none. However, neither the courts nor other legal professionals had seen any cases since the new measure was implemented. Overall it would appear unlikely that extending availability of non-molestation and occupation orders to same sex couples would have had any impact on applications for non-molestation orders.

With regard to the extension of the availability of orders for people who have never lived together, we would have expected the number of applications and orders to have risen. None of the professionals working in the courts had seen any change in the parties considered for non-molestation orders. While this cannot be explained with any certainty, it may be that people who have never lived together and who require non-molestation orders may not yet be aware of the new measure, or they or the professionals involved in their



cases do not consider them relevant to their situation (and the occupation orders would be irrelevant in these cases), or they may perhaps be using other measures. The number of cases and use of the measures clearly need to be monitored for a longer period.

Although it was not possible to evaluate the extension of the availability of non-molestation and occupation orders to same sex and cohabiting couples, the views expressed by both professionals and victims/survivors interviewed were unanimous and very positive. For instance, victims/survivors commented that:

*“It shouldn’t matter that it is a same-sex relationship...It should also apply to people who have not lived together.”*

(Domestic violence victim/survivor, phase two)

*“Sexuality shouldn’t be an issue [and] it shouldn’t matter whether you have lived together or not.”*

(Domestic violence victim/survivor, phase two)

## **4.2 Enabling courts to impose restraining orders when sentencing for any offence and on acquittal for any offence**

Part 2 of the DVCV Act deals with changes to restraining orders (‘stay away orders’ likened by Harriet Harman to a ‘yellow card’ (BBC News, 2003)), both in England and Wales (section 12) and Northern Ireland (section 13). The changes allow restraining orders to be imposed when sentencing for any offence, on acquittal for any offence (including on the overturning of a conviction on appeal). This extends provision previously only available under the *Protection from Harassment Act 1997* (section 5).

This measure had still not been implemented by the time of the research and there was no agreed implementation date. We were therefore able to ask about general views on this aspect but not to evaluate impact.

## **Findings**

Of the professionals interviewed in phase one and phase two, few commented on the potential change in use of application of restraining orders, because they did not see this aspect as having a particular impact on their work or because they did not understand the implications. Those who did comment, in particular advocates, barristers, and other legal professionals, tended to single out this aspect as the DVCV civil measure that could potentially have a large and positive impact on how domestic violence cases are dealt with. One interviewee commented that this was important because:

*“...it’s another proactive step that that could be taken and another sanction that could be used that saves the woman having to go somewhere else and do it all over again...”*

**(Advocacy service manager, phase one, Croydon)**

This was echoed by one of the legal professionals:

*“It’s unfortunate that s12 isn’t in yet because that would complete the whole package and back up – being able to deal with protection, even where there’s an acquittal.”*

**(Court service, phase two, Croydon)**

Another commented that she was particularly keen to use restraining orders for offences other than those under the Protection from Harassment Act, although was not sure how the courts would respond:

*“I’m not touching on restraining orders for people who are acquitted, but restraining orders for offences other than offences under the Protection from Harassment Act I think I would have liked to utilise. But I don’t know what the response from the tribunals would be.”*

**(Solicitor, phase one, Croydon)**

Views from victims/survivors were also generally supportive of this measure. They highlighted that an acquittal “*didn’t mean that he didn’t do something*” and that the perpetrator could still be dangerous or hassling them. They also felt, however, that the proposed change was an indictment of the present system and highlighted failures in relation to convictions.

### **4.3 Summary**

The period of evaluation of the extension of non-molestation and occupation orders was too brief for any real findings to emerge, and this is an area that will need to be monitored in the longer term. Initial findings indicated that:

- Both professionals and victim/survivors supported that non-molestation and occupation orders be made available to same sex relationships and to couples who have never lived together.
- Professionals reported that although more victims of same sex domestic violence were accessing support services the numbers were tiny and therefore unlikely to have had any impact on numbers of non-molestation or occupation orders.
- None of the professionals working in the courts had seen any change in the parties considered for non-molestation orders. The data available did not allow examination of whether orders had been granted to couples who have never cohabited.
- Professionals who commented on the, as yet not implemented, use of restraining orders for any offence and on acquittal, saw this as the measure that could potentially have the biggest impact.

## 5. Conclusions and recommendations

### 5.1 Conclusions

The DVCV Act 2004 was hailed as “the biggest overhaul of legislation on domestic violence in 30 years” (Baroness Scotland, 2003). Our evaluation, which provides an early ‘snapshot’ of progress towards the implementation of the new measures of the Act, shows that the impact by December 2007 had been limited and in some respects unclear.

The area where greatest impact could be discerned was in relation to common assault being made an arrestable offence (an aspect of the Act that was superseded by other legislation). The aim in this regard was to strengthen and clarify police powers and to encourage and back up the positive, pro-arrest policy as put forward in the Revised Home Office Circular 19/2000 and in Association of Chief Police Officers (ACPO) guidance (Centrex, 2004). The evaluation provides evidence of this aim beginning to be achieved, with professionals seeing the measure as a positive move that provided clarification of existing good practice, and a tentative finding of increasing use of common assault since this became an arrestable offence.

The evidence regarding impact of the new measure in the Act, criminalising the breach of a non-molestation order, was unclear. Professionals disagreed as to whether there had been any impact, or whether any perceived impact was negative or positive. The phased entry of the new measure also appeared to be causing confusion among legal professionals and the police. Victim/survivors and advocates generally welcomed the measure, although their views were also based on the hope that better enforcement and heavier sanctions for breaches would be the result. The number of applications and orders in July to October 2007 decreased when compared with the same period the previous year. However, on the basis of the existing data it is not possible to conclude whether this is linked to the DVCV Act or whether it represents a consolidation of previous downward trends.

There was not enough evidence regarding breaches to make any conclusions regarding sanctions. In addition, at this early stage of implementation there was no conclusive evidence of impact regarding non-molestation and occupation orders being made available to same sex relationships and to couples who have never lived together.

At the time of the evaluation the implementation of measures enabling courts to impose restraining orders when sentencing for any offence, and enabling courts to impose restraining orders on acquittal for any offence (or if a conviction has been overturned on

appeal) had not been implemented. Advocates, barristers, and other legal professionals interviewed, tended to single out this aspect as the DVCV civil measure that could potentially have a large and positive impact on how domestic violence cases are dealt with. Views from victims/survivors were also generally supportive of this measure.

## 5.2 Recommendations for policy and practice

This was an early evaluation, designed to provide a snapshot of the domestic violence measures implemented to date. All findings should be treated accordingly. However, it is possible at this stage to recommend the following:

- That specific guidance is developed and training implemented for the police regarding the new measures, particularly in relation to the criminalisation of breach of a non-molestation order (Part 1, section 1.1, DVCV Act 2004).
- That the measures intended to increase the protection of victims by enabling the courts to impose restraining orders when sentencing for any offence, and enabling courts to impose restraining orders on acquittal for any offence (or if a conviction has been overturned on appeal) (Part 2, sections 12 and 13) are implemented as soon as possible.
- That the impact of the DVCV Act is monitored in the longer term. This requires that reliable data on both civil and criminal processes are collected and collated nationally:
  - The Ministry of Justice needs to collect and collate data from all the relevant courts in relation to breaches and to applications and orders for non-molestation and occupation orders, and work to ensure accuracy.
  - The current complexities in assessing the progress of cases through the criminal justice system will only be overcome if police and CPS data are linked directly, and at a national level.

It also requires that the data is contextualised via the impact of other factors on the use of civil remedies, such as availability of legal aid, and concerns by victim/survivors regarding criminalisation and/or enforcement.



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## Appendix 1: Other measures in DVCV Act

There are a number of additional measures in the DVCV Act that relate to domestic violence but were not subject to the current evaluation. These are:

- Putting in place a system to review domestic violence homicide incidents, drawing in the key agencies, to find out what can be done to put the system right and prevent future deaths. **[To be implemented 2008.]**
- Providing a code of practice, binding on all criminal justice agencies, so that all victims receive the support, protection, information and advice they need.
- Allowing victims to take their case to the Parliamentary Ombudsman if they feel the code has not been adhered to by the criminal justice agencies.
- Setting up an independent Commissioner for Victims to give victims a powerful voice at the heart of Government and to safeguard and promote the interests of victims and witnesses, encouraging the spread of good practice and reviewing the statutory code.
- Giving victims of mentally disordered offenders the same rights to information as other victims of serious violent and sexual offences.
- Giving the Criminal Injuries Compensation Authority the right to recover from offenders the money it has paid to their victims in compensation.
- A surcharge to be payable on criminal convictions and fixed penalty notices which will contribute to the Victims Fund. For motoring offenders the surcharge will only apply to serious and persistent offenders.
- Closing a legal loophole by creating a new offence of causing or allowing the death of a child or vulnerable adult. The offence establishes a new criminal responsibility for members of a household where they know that a child or vulnerable adult is at significant risk of serious harm.
- Bringing in the Law Commission recommendation for a two-stage court trial to ensure that high volume crimes like fraud and internet child pornography can be punished in full.





## Appendix 2: Vignettes used as questionnaires and in focus groups and interviews with victim/survivors

*Thank you very much for agreeing to take part in our research.*

We are researchers from Bristol University and Durham University and are currently writing a report for the Ministry of Justice. There have been a range of changes relating to domestic violence recently and our job is to work out whether domestic violence survivors think the changes are for the better or not. We would be very grateful if you would read each of the six scenarios below and consider the two options in each case. We want to know which one you think is best and why. We might quote you in our report but we will not use your name and no one will be able to link the quotes we use to you.

*From - Prof. Marianne Hester, Julia Pearce and Dr Nicole Westmarland.*

Ann's husband, Paul, has been out drinking since lunchtime. She has been worried about him coming home all evening because the football team he supports has lost. He has been violent towards her before when he is very drunk. They have a three-month-old baby who has been irritable all evening and she is particularly concerned that he will try and wake the baby up. Paul arrives home and enters the kitchen where Ann is stood with the fridge door open. He bashes her to the side out of the way with his shoulder, upper arm and elbow. Ann is bruised but not seriously injured. She can tell he is in a bad mood. She is so worn out from looking after the baby that she wants to make a stand and show him that she will not put up with him treating her like that. She phones the police and reports what has happened.

**Option 1.** The police arrive and question Paul in the garden. They warn him that if he continues to be aggressive and they have to attend again he may get arrested. They recommend he goes straight to bed and sleeps off the alcohol.

**Option 2.** The police arrive and question Paul in the garden. They can see that Ann is exhausted and that Paul is drunk and aggressive. They arrest him and he is detained in police custody overnight.

**Which option is best and why?**

Mary and Jack have been separated for 6 months after being married for 20 years. Mary had experienced domestic violence for most of her married life and finally managed to end the relationship after she joined a local women's support group, however Jack still keeps coming round and thinks he can still control her. On the advice of her support worker she gets a solicitor and applies for a 'non molestation order' (an order preventing a person from causing trouble or being violent). Mary phones Jack to warn him about the order and stating that she will phone the police if he comes to the house again. Jack laughs and says he is on his way round and that a piece of paper won't stop him. When he turns up Mary phones the police.

**Option 1.** The police turn up and tell Jack to leave Mary's house. They tell Mary to get back in touch with her solicitor to inform them that the order has been breached.

**Option 2.** The police turn up and arrest Jack for breaching the order.

**Which option is best and why?**

Susan and Sara were in a relationship for three years and lived together for two of these. Sarah had always had problems with jealousy, but these had got worse since they had lived together. Things escalated to the point where Sara wouldn't let Susan go out on her own except to work. Sara had also pushed Susan over a number of times during arguments. When they split up Sara continued to be aggressive so Susan went to a solicitor to see what she could do.

**Option 1.** The solicitor informs Susan that she could have applied for a non-molestation order (an order preventing a person from causing trouble or being violent) if she were in a heterosexual relationship, but that these are not allowed for people in same sex relationships.

**Option 2.** The solicitor informs Susan she can apply for a non-molestation order (an order preventing a person from causing trouble or being violent).

**Which option is best and why?**

Tracy and Stewart split up after dating for about a year. Stewart was very aggressive from the start but he told Tracy he was only like that because he loved her so much. He said he had never loved anyone so much in his life. On one occasion he beat her up so much that she had to go to hospital, but she just told the nurse that she was drunk and fell down the stairs. But she goes to see a solicitor to make sure he knows she is serious about not putting up with any more violence and to emphasise that she doesn't want to see him ever again.

**Option 1.** The solicitor informs Tracy that she could have applied for a non-molestation order (an order preventing a person from causing trouble or being violent) if she had ever lived with Stewart, but that these are not allowed for people who have not lived together.

**Option 2.** The solicitor informs Tracy she can apply for a non-molestation order (an order preventing a person from causing trouble or being violent).

**Which option is best and why?**

Jane and Steven dated for ten months but Jane decided she did not want to continue with the relationship and ended it. Steven took it very badly, at first refusing to accept that Jane did not want to continue the relationship and then becoming increasingly aggressive. He seemed to be everywhere she went – at the supermarket, waiting outside her work and sitting on her doorstep. One day she received a bunch of red roses at her work with a card attached that read: 'I still love you. If you go out with anyone else I will kill you and myself. There will be no point to life. Please can we try again?' Jane is scared and phones the police.

**Option 1.** Steven is arrested and charged with the criminal offence 'threat to kill'. He pleads guilty and breaks down in court and says he is sorry and that he only did it because he loves Jane so much. He receives a conviction for 'threat to kill' and is sentenced to a £150 fine.

**Option 2.** The same as option 1, except after sentencing the court also impose a restraining order on Steven that states he can not enter the street where Jane lives or works.

**Which option is best and why?**

Ian received a nine-month prison sentence for a very violent attack on his ex-girlfriend that left her hospitalised for over a week and with severe scarring. He mounted an appeal from prison, where it emerged that the police had not followed proper procedures during his police interview. In particular, they had failed to tape record the first part of the interview where Ian admitted to the offence. The Court of Appeal accepts that proper procedures had not been followed and overturns the conviction.

**Option 1.** Ian is released from prison but the Court of Appeal order that a restraining order is put in place where Ian cannot enter the street where his ex-girlfriend lives or works.

**Option 2.** Ian is released from prison.

**Which option is best and why?**

**Ministry of Justice Research Series 14/08**

**Early evaluation of the Domestic Violence, Crime and Victims Act 2004**

This report provides an early evaluation of the Domestic Violence, Crime and Victims Act 2004. It focuses on a number of measures of the Act designed to protect and support victims of domestic violence. The report examines the views of professionals involved in the system, and of victims, on the new measures and their implementation. It also examines quantitative data pre and post implementation, aiming to provide an early view of their impact.

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